

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Cheney Heiniemi

NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY

Debtor

Chapter 13, Case No. 04-50726

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TO: Cheney Heiniemi, INCLUDING TRUSTEE AND OTHER INTERESTED PARTIES

1. Wells Fargo Bank, N.A., (*Movant*), a corporation, by its undersigned attorneys, moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 10:30 a.m. on November 29, 2004, in Courtroom 2, 416 U.S. Courthouse, 515 West Fifth Street, Duluth, MN 55802 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on November 23, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than November 17, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays).

UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rules of Bankruptcy Procedure 5005 and Local Rule 1070-1, and is a core

proceeding. The petition commencing this Chapter 13 case was filed on June 22, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to a mortgage lien encumbering real property of Debtor.

6. Debtor above-named are the owner of certain real property located at 302 Riverside Drive Northeast, Saint Cloud, MN 56304, legally described as follows, to-wit:

Lot Eleven (11), in Block Five (5), in St. Cloud park, (now a part of the City of St. Cloud), according to the plat and survey thereof on file and of record in the Office of the County Reorder in and for Benton County, Minnesota.

7. The indebtedness of Cheney Heiniemi is evidenced by a Promissory Note and Mortgage dated May 1, 2002, filed of record in the Benton County Recorder's office on May 2, 2002, and recorded as Document No. 285471. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A. Said mortgage was subsequently assigned to Movant.

8. The Debtor was current on his mortgage obligation to Movant at the time of the bankruptcy filing. Movant has not filed a Proof of Claim nor receiving payments from the Trustee.

9. Pursuant to said Plan, the Debtor was to maintain monthly payments due and payable pursuant to the indebtedness to Movant outside the Plan.

10. The Debtor has failed to pay the monthly payments on the indebtedness, outside the Plan for the months of August 1, 2004 to the present date and as of the hearing date

November 1, 2004 will be due for a total delinquency of \$4,296.00 together with reasonable attorneys fees and costs incurred pursuant to the terms of the note and mortgage.

11. By reason of the foregoing, Debtor is in default on payments under the note, mortgage and the Chapter 13 Plan. Movant is inadequately secured and entitled to have the automatic stay lifted and vacated so it can commence foreclosure against the property under the mortgage pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: October 18, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

IN RE:

Cheney Oscar Heiniemi

AFFIDAVIT OF PETITIONER

Debtor

Chapter 13, Case No. 04-50726  
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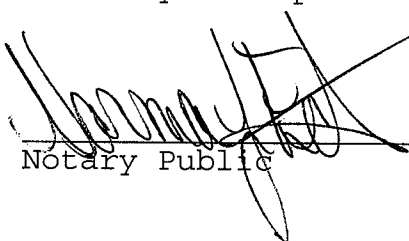
STATE OF GEORGIA

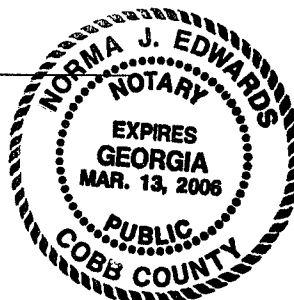
COUNTY OF FULTON

Chris Robertson, being first duly sworn, deposes and states He is authorized representative of Movant and has direct real-time access to the computer records of Movant which are maintained in the ordinary course of business and that He has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of His knowledge to the best of His information.

  
\_\_\_\_\_

Subscribed and sworn to before me this  
24th day of September, 2004.

  
\_\_\_\_\_  
Notary Public



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HARVEY J. JONES  
COUNTY RECORDER

BY VHC DEPUTY rm

OFFICE OF  
BENTON COUNTY RECORDER  
BENTON COUNTY, MN  
CERTIFIED TRUE FILED  
RECORDING SECTION

Registration tax hereon of \$ 304<sup>75</sup> paid  
Aud./Treas. Receipt No. 45471

285471

200 MAY -2 A 11:47

Loren Neuman  
County Aud./Treas. rm

[Space Above This Line For Recording Data]

## MORTGAGE

Return To:

RETURN TO:  
Title Professionals and  
Abstract Company  
PO Box 879  
St. Cloud, MN 56302  
FILE# 2239104R

**NOTICE: THIS LOAN IS NOT ASSUMABLE  
WITHOUT THE APPROVAL OF THE DEPARTMENT  
OF VETERANS AFFAIRS OR ITS AUTHORIZED  
AGENT.**

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated  
together with all Riders to this document.

May 1, 2002

HEINIEMI CHENEY 8293268  
MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 1/01

VMP -6G(MN) (0005).01

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Initials CH

VMP MORTGAGE FORMS - (800)521-7291



2200 Title Professionals  
St Cloud MN ch# 19053

(B) "Borrower" is CHENEY HEINIEMI, A SINGLE ADULT

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is LIBERTY SAVINGS BANK FSB

Lender is a CORPORATION

organized and existing under the laws of

THE UNITED STATES OF AMERICA

Lender's address is 111 7TH AVE S, ST CLOUD, MN 56301

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated May 1, 2002

The Note states that Borrower owes Lender One Hundred Thirty Two Thousand Five  
Hundred and no/100

Dollars

(U.S. \$132,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic  
Payments and to pay the debt in full not later than May 1, 2032

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the  
Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges  
due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following  
Riders are to be executed by Borrower [check box as applicable]:

- |                                                |                                                         |                                             |
|------------------------------------------------|---------------------------------------------------------|---------------------------------------------|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> Second Home Rider  |
| <input type="checkbox"/> Balloon Rider         | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider   |
| <input checked="" type="checkbox"/> VA Rider   | <input type="checkbox"/> Biweekly Payment Rider         | <input type="checkbox"/> Other(s) [specify] |

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,  
ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,  
non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other  
charges that are imposed on Borrower or the Property by a condominium association, homeowners  
association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by  
check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic  
instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit  
or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller  
machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse  
transfers.

(K) "Escrow Items" means those items that are described in Section 3.

HEINIEMI CHENEY

8293268

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8293268-56(MN) (0006) 01

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IN-0005

Form 3024 1/01

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the

[Type of Recording Jurisdiction]

of

[Name of Recording Jurisdiction] :

LOT ELEVEN (11), IN BLOCK FIVE (5), IN ST CLOUD PARK, (NOW A PART OF THE CITY OF ST. CLOUD), ACCORDING TO THE PLAT AND SURVEY THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE COUNTY RECORDER IN AND FOR BENTON COUNTY, MINNESOTA.

Parcel ID Number: 17-00747-00  
302 RIVERSIDE DRIVE NE  
ST CLOUD  
("Property Address"):

which currently has the address of

[City], Minnesota 56304 [Zip Code]

HEINIEMI CHENEY

8293268

12/11/01 -6G(MN) (00051.01)

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Initials: CH

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Form 3024 1/01

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Cheney Heiniemi

MEMORANDUM OF LAW

Debtor

Chapter 13, Case No. 04-50726  
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11 U.S.C. Section 362(d) provides that on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under section (a) of this section for cause, including lack of adequate protection of an interest in property of such party in interest. Failure of a Chapter 13 debtor to make postconfirmation payments to a mortgagee is sufficient cause for relief from the automatic stay. Reinbold vs. Dewey County Bank, 942 F.2d 1304 (8th Cir. 1991). Following the debtor's filing of the petition on June 22, 2004 no payment has been made to movant for the month(s) of August 1, 2004 to the present and as of the hearing date November 1, 2004 will be due. Accordingly, cause exists for the granting of relief from the automatic stay.

WHEREFORE, Wells Fargo Bank, N.A. respectfully requests this Court to grant movant relief from the automatic stay of 11 U.S.C. Section 362(a).

Dated: October 18, 2004.      USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888



U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Cheney Heiniemi

Debtor

UNSWORN DECLARATION  
FOR PROOF OF SERVICE

Chapter 13, Case No. 04-50726  
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Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on October 18, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Michael J. Farrell  
Chapter 13 Trustee  
P.O. Box 519  
Barnesville, MN 56514

Wesley W. Scott  
Schmidt & Lund  
13 S. 7th Street  
St. Cloud, MN 56301

Cheney Heiniemi  
302 Riverside Drive Northeast  
Saint Cloud, MN 56304

/E/ Erin Kay Buss  
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Cheney Heiniemi

ORDER

Debtor.

Chapter 13, Case No. 04-50726  
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The above entitled matter came on for hearing upon motion of Wells Fargo Bank, N.A., (*Movant*) pursuant to 11 U.S.C. Section 362 on November 29, 2004 at the U.S. Bankruptcy Court, Duluth, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED THAT:

The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Lot Eleven (11), in Block Five (5), in St. Cloud park, (now a part of the City of St. Cloud), according to the plat and survey thereof on file and of record in the Office of the County Reorder in and for Benton County, Minnesota.

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this \_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Judge of the Bankruptcy Court